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House of Representatives

The House was not in session today. Its next meeting will be held on Friday, August 1, 2003, at 4 p.m.

Senate

THURSDAY, JULY 31, 2003

(Legislative day of Monday, July 21, 2003)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

O God, who blesses us in ways we cannot number or describe, forgive us when we forget Your mercies. We thank You that in the shadow of Your wings we can find refuge. Thank You for filling our empty hands with good. Give us, today, a clearer vision of Your truth that we may do Your will.

Lord, help us to tear down the walls of mistrust and suspicion that divide us and build bridges of unity and cooperation. May we remember the power of courtesy and civility. May our actions reinforce our words. Help us to be steadfast and unmovable in our resolve to make a positive impact on our world. We pray this in Your strong name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable PATRICK J. LEAHY, a Senator from the State of Vermont, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will debate the cloture motion relating to the Pryor nomination until 10 a.m. Following the debate relating to the Pryor nomination, the Senate will proceed to the cloture vote. Therefore, the first vote in today's session will occur at approximately 10 a.m. Following the cloture vote, the Senate will resume consideration of S. 14, the Energy bill.

Last night I filed a cloture motion relative to the pending Energy legislation. As I said last night, that cloture motion was filed to give us a chance to finish the bill prior to the August recess. If we have any hope of passing a bill which would establish a national energy policy, then the Senate must invoke cloture. In the interim, I know the chairman will certainly work with Members toward consent agreements to allow consideration of any additional amendments. It is our hope to continue to process Senators' amendments prior to the cloture vote.

Let me reiterate again that our commitment remains on this side of the aisle to finish this Energy bill. Cloture votes on judicial nominees will not and should not detract us from the ultimate goal of concluding our work on this bill. I hope today that we can renew our efforts, have Members come forward with their amendments, debate those amendments, and then have the Senate work its will on the issues.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF WILLIAM H. PRYOR, OF ALABAMA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

The PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be equally divided between the Senator from Utah, Mr. HATCH, and the Senator from Vermont, Mr. LEAHY, for debate prior to a vote on the motion to invoke cloture on the nomination of William Pryor.

The Senator from Utah.

Mr. HATCH. Mr. President, on Tuesday a cloture motion was filed on the nomination of William Pryor for the Eleventh Circuit Court of Appeals. I rise today to urge my colleagues to vote for cloture on this nomination.

Why must we seek cloture on this nomination? Unfortunately, we all know the answer. A majority of Democratic Senators have developed a poor track record of denying a minority of Democratic Senators and the entire Republican majority, easily a majority of the Senate, the right to vote to confirm two of President Bush's outstanding Circuit Court nominees, Miguel Estrada and Priscilla Owen. One filibuster of an outstanding Federal circuit court nominee was bad

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

enough—unprecedented, in fact, in the history of the Senate. A second filibuster doubled the ignominy. I fear that the second filibuster will not be the last. I wonder whether there is a particular number of filibusters that the majority of Democrats has in mind. I, and the majority of this Senate would like to know.

I have heard certain Democrats say that a baseball player would be thrilled to have a batting average as good as the percentage of President Bush's nominees who have been confirmed since he took office. Assuming such an analogy is relevant, let's take it a bit further. I wonder if that same baseball player would sit calmly on the bench if, in the most important innings of the season, the opposing team invoked a rule to prevent that player from even getting into the batter's box. And what if the rule invoked had never been used to deny a player the right to take his swings? Should that player and his team's manager be thankful that most other players were allowed to play? Should the opposing manager be able to tell that player and his team, well, I understand your manager put your name on the gameday lineup two seasons ago, but it is up to us, not him and not your team, when or if you will ever play? I submit that they would be as frustrated and disappointed as we Senators are today, with the two ongoing filibusters of nominees whose names were submitted by the President well over 2 years ago, and the real probability of more indefinite delays to come.

Here is what we know: a majority of Democrats has made it clear to a majority of Senators that they are determined to deny it the right to vote, and to deny a nominee what he or she deserves, an up or down vote.

By the way, the President deserves an up-or-down vote on his nominees. We certainly gave judges up-or-down votes in the Clinton administration and during the Carter administration.

When they got to the floor, they got up-or-down votes. Because we do not know when the next filibuster is coming, we must ensure that debate on Attorney General Pryor's nomination to the Eleventh Circuit is ample but not endless. Unfortunately, we know from the filibusters of Miguel Estrada and Justice Owen that meaningful deliberation on these nominees is not the goal of those who would deny us the right to vote on their confirmation. The goal is to prevent a majority of the Senate from fulfilling its constitutional duty. In an effort to keep this from happening, we have filed for cloture. I urge my colleagues to support cloture on General Pryor's nomination.

Over the past 6 months we have heard that a filibuster is justified for Miguel Estrada on the grounds that he has not been forthcoming enough or that the Senate needed blanket access to all of his legal memoranda in order to make an informed choice.

Well, that is interesting because Democrats have never asked for these types of investigations or these types of documents for any other Senate nominee. They have not asked for these documents for women. They have not asked for these documents for white males but all of a sudden we have the first Hispanic nominated to the Circuit Court of Appeals for the District of Columbia and all of a sudden they are asking for documents that they know the Solicitor General's office cannot give, not because there is anything to hide—Miguel Estrada would have given them up if he had had the power to do so—but because it is not the right thing to do. They are privileged documents.

In Justice Owen's case, she appeared before the Judiciary Committee twice and answered dozens and dozens of oral and written followup questions in great detail. Her court opinions are available and have been read and scrutinized by Members of the Senate. No one doubts that she has a sufficient record. So why is she being held up? I might add, why is she being treated differently from Miguel Estrada? Nobody has demanded those types of documents from her.

But not even those most vigorously opposed to Bill Pryor's nomination contend that his record is insufficient. He has been a bold, vocal, and successful advocate for his State as attorney general, an elected office in Alabama.

Prior to and during his campaign seeking reelection to the attorney general position in 1998 and 2002, he made his positions on the contentious issues of the day crystal clear, and he won his most recent election with almost 60 percent of the vote. Rarely has the Judiciary Committee reviewed such a full and unmistakably clear record for an appellate nominee. Rarely has the Judiciary Committee reviewed such a full and unmistakably clear record for an appellate nominee; rarely has a nominee at his hearing been so honest, intelligent and forthright in his answers to every Senator's questions, even though he surely knew that his legal and policy positions on many, if not most, issues, clashed head-on with the positions of those who questioned him. Similarly, in his answers to approximately 288 written questions from seven different Democratic Senators, he was as clear and complete as he had been during his hearing. And even after Bill Pryor answered all of these questions, some Democrats regrettably continued to try to dig for dirt on him, using unauthenticated and possibly stolen documents as a pretext for a so-called investigation, when not a single person has made a substantive, authenticated allegation against him. But throughout almost a month of this unilateral fishing expedition, including phone calls to 20 people, nobody can show that Bill Pryor was anything other than truthful with our committee.

We all know what kind of man Bill Pryor is, and we all know what he believes. We even know why he believes what he believes. But therein lies the problem, apparently, for those who seek to prevent us from voting to confirm him.

The problem that those opposed to giving Bill Pryor an up or down vote in the Senate have is that they cannot credibly make any substantive arguments against him—so they oppose him based on what he has stated he personally believes. They cannot cast aspersions on his legal ability—the undisputed quality of his legal work as attorney general of Alabama is reflected in several major cases in which the Supreme Court majorities have agreed with his arguments. They cannot say he is only a one-party horse—because so many Democrats, and many prominent African-American Democrats, in Alabama support him even though they disagree with him politically. They cannot really find anything substantive that might reflect poorly on his qualifications to sit on the Federal bench. So they attack his personal beliefs, even though in every instance in which a conflict between those beliefs and the law has arisen in Bill Pryor's career, he has unfailingly put the law first. In most of the cases they criticize him for, he was won in the Supreme Court, making such criticism even more laughable.

The President has nominated a good an honest man with a sterling legal career, a bipartisan reputation for enforcing the law impartially as attorney general, and an enviable record of success before the Nation's highest Court. Contrary to all available evidence, a minority of the Senate may attempt to prevent us from voting on him. Such an attempt is profoundly at odds with what the Constitution demands of us as Senators. The President and the American people have a right to an up or down vote on judicial nominees. That is what the advise and consent clause means. Playing political games with judicial nominees must stop. We must do our duty to vote on this excellent nominee, Bill Pryor.

Now, if this is another filibuster, we need to ferret it out. That is why we will have the cloture vote. For those complaining this interrupts the Energy bill, we are here at 9 a.m. in the morning; energy can start right after this cloture vote.

Let's face it, there has been a slow walk on the Energy Bill as there has been on almost everything this year. We all know the game that is going on. Frankly, in the case of Bill Pryor, it is a very dangerous game.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I yield 6 minutes to the senior Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I urge my colleagues to vote against cloture on the nomination of William Pryor. Since President Bush came into office, the Senate has confirmed 140 of his nominees and so far blocked only two. We have blocked these nominees partly

because they were too extreme for lifetime judicial appointments, and partly because the White House and the Senate Majority have tried to jam the nominations through the Senate without respect for the Senate's advice and consent role under the Constitution, and without respect for the Senate's rules and traditions.

The nomination of Mr. Pryor illustrate all of these issues. His views are at the extreme of legal thinking. It is clear from his record that does not merit confirmation to a lifetime seat on an appellate court that often has the last word on vital issues, not only for the 4.5 million people of Alabama, but also for the 8 million people of Georgia and the 15 million people of Florida.

Mr. Pryor is not simply a conservative, he is committed to using the law to advance a narrow ideological agenda that is at odds with much of the Supreme Court's jurisprudence over the last 40 years. An agenda that is at odds with important decisions that have made our country more inclusive and fair over the past 40 years.

Mr. Pryor's agenda is clear. He is an aggressive supporter of rolling back the power of Congress to remedy violations of civil and individual rights; he is a vigorous opponent of the constitutional right to privacy and a woman's right to choose; and, he is an aggressive advocate of the death penalty, even for individuals with mental retardation. He contemptuously dismissive of claims of racial bias in the application of the death penalty. He is a ardent opponent of gay rights.

What we are expected to believe is that despite the intensity with which he holds these views and the years he has devoted to dismantling these legal rights, he will still ''follow the law'' if he's confirmed to the Eleventh Circuit. Repeating that mantra again and again in the face of his extreme record does not make it credible that he will do so.

Mr. Pryor's supporters say that his views have gained acceptance by the Courts, and that his legal positions are well within the legal mainstrain. This is simply not true. Mr. Pryor has consistently advocated views to narrow individual rights far beyond what any court in this land had been willing to hold.

Just this past term, the Supreme Court rejected Mr. Pryor's argument that States could not be sued for money damages for violating the Family and Medical Leave Act. The Court rejected his argument that states should be able to criminalize private sexual conduct between consenting adults. The Court rejected his far-reaching argument that counties should have the same immunity from lawsuits that States have. The Court rejected his argument that the right to counsel does not apply to defendants with suspended sentences of imprisonment. The Court rejected his argument that is was constitutional for Alabama prison guards to handcuff prisoners to ''hitching posts'' for hours in the summer heat.

Last term, the Court also rejected Mr. Pryor's view on what constituted cruel and unusual punishment in the context of the death penalty. The Court held, contrary to Mr. Pryor's arguments, that subjecting mentally retarded persons to the death penalty violated the Eighth Amendment. And just this Spring, the Eleventh Circuit, a circuit dominated by conservative, Republican appointees, rejected Mr. Pryor's attempt to evade that Supreme Court's decision. Mr. Pryor attempted to prevent a prisoner with an IQ of 65—whom even the prosecution had noted was mentally retarded—from raising a claim that he should not be executed. Repeatedly, his far-reaching arguments have been rejected by the courts. This is not a man within the legal mainstream.

Mr. Pryor and his supporters simply say that he is ''following the law,'' but repeatedly Mr. Pryor attempts to make the law, using the Attorney General's office as his own personal ideological platform.

Mr. Pryor's many intemperate, inflammatory statements show that he lacks the temperament to serve on the Federal court. Mr. Pryor ridiculed the Supreme Court of the United States for granting a temporary stay of execution in a capital punishment case. Alabama is one of only 2 States in the Nation that uses the electric chair as its sole method of execution. The Court granted review to determine whether the use of the electric chair was cruel and unusual punishment. For Mr. Pryor, however, the Court should not have even paused to consider this Eighth Amendment question. He said the issue ''should not be decided by 9 octogenarian lawyers who happen to sit on the Supreme Court.'' This doesn't reflect the thoughtfulness we seek in our federal judges.

He is dismissive of concerns about fairness in capital punishment. He has stated: ''make no mistake about it, the death penalty moratorium movement is headed by an activist minority with little concern for what is really going on in our criminal justice system.''

I have watched my colleagues on the other side bring up every argument they can find to save this nominee. Mr. Pryor's record is so full of examples of extreme views, and they labor to rebut each one. They call Senate Democrats and citizens who question Mr. Pryor's fitness—including more than 204 local and national groups—a variety of names, and accuse us of bias. The question however is why when there are so many qualified Republican attorneys in Alabama, the President would choose such a divisive nominee? Why pick one whose record raises so much doubt as to whether he will fair? Why pick one who can only muster a rating of partially unqualified from the American Bar Association?

I hope this nominee will not be approved.

The PRESIDENT pro tempore. Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the Senator from Massachusetts. It is interesting that we are in this debate. We are told we want to finish the Energy bill, yet we have been talking about everything but energy. We have a number of judicial nominations that have been brought up that are obviously controversial, obviously not ripe for debate. That takes time. At the same time, we have ignored a number of judicial nominations that could have been voted on in a series of 10-minute rollcall votes had the leadership wanted that.

Maybe they don't really want to finish the Energy bill before the recess. Or perhaps, as we now read in the paper, the White House has ordered Republican leadership to have four cloture votes, a very busy week.

When I came here and when the distinguished Presiding Officer, my friend from Alaska, and the very highly respected President pro tempore, we tended to be more independent around here, independent of the White House. The Senate was its own body. Now the White House tends to run things, even picking the Republican leadership. It is a strange time.

I am going to yield quickly to the Senator from New York, but I just want to say one thing. One of the most despicable things in this debate has been the charges made by supporters of the administration that Democratic Senators are anti-Catholic because we oppose Mr. Pryor, notwithstanding his far right, way out of the mainstream ideology and past actions; notwithstanding the fact that we asked questions about whether he was soliciting campaign contributions from the same companies he was supposed to be suing and prosecuting. Notwithstanding that, because we raised these questions, the answers are not given to the questions we raise. Instead, we are called anti-Catholic.

This charge is despicable. I have waited patiently for more than 2 years for my counterparts on the other side to disavow such charges. They stay silent, and of course the best way for a lie to take root is for people to stay silent about it. They stayed silent about this lie—actually that is not true. They haven't just stayed silent about it. Many have gone on and repeated it.

The slander in the ads recently run by a group headed by the President's father's former White House counsel and a group whose funding includes money raised by Republican Senators and the President's family is personally offensive. They have no place in this debate or anywhere else.

I challenged Republican Senators, who are so fond of castigating special interest groups and condemning every statement critical of a Republican nominee as a partisan smear, to condemn this ad campaign and the injection of religion into these matters.

Only one of the newest Members of the Senate on the Republican side responded to the challenge.

Other Republican members of the Judiciary Committee and of the Senate have either stood mute in the case of these obnoxious charges or, worse, have fed the flames. Last night, at least three Republican Senators came to the floor, not to condemn this campaign of calling Democrats anti-Catholic—including this lifelong Catholic—but they have come here to fan the flames, to stoke this divisive, harmful, and destructive campaign. I have rarely been more disappointed in the Senate.

Where are the fair-minded Republican Senators? What has silenced them? Are they so afraid of the White House that they would allow this religious McCarthyism to take place? Why are they allowing this to go on? The demagoguery, divisive and partisan politics being so cynically used by supporters of the President's most extreme judicial nominees needs to stop.

I remember when one of the greatest Senators of Vermont, Ralph Flanders, stood up on this floor, even though he was a Republican, sort of the quintessential Republican—he stood up and condemned what Joseph McCarthy was doing. And it stopped. I hope some will stand up and condemn this charge of anti-Catholicism leveled against the members of the Senate Judiciary Committee.

A few days ago we heard from a distinguished group of members of the clergy from a variety of churches and synagogues who serve as members of the Interfaith Alliance. They were willing to do what the Republican Senators will not, and held a forum to discuss the recent injection of religion into the judicial nominations process. The Alliance is a national, grassroots, non-partisan, faith-based organization of 150,000 members who come from over 65 religious traditions. These men and women of faith promote the positive and healing role of religion in public life, and challenges all who seek to manipulate or otherwise abuse religion for sectarian or partisan political purposes. They came to the United States Capitol to denounce the despicable charges made against Senators, and to urge, as many of us have, that this involvement of religion in the confirmation process come to an end. I would like to enter into the record the remarks of participants in the forum on July 29, 2003, including statements by Rev. Dr. C. Welton Gaddy, the President of the Interfaith Alliance, Rabbi Jack Moline, the Vice-chair of the Alliance, and the Right Reverend Jane Holmes Dixon, the Immediate Past President of the Alliance. These statements are moving and persuasive and important. I would hope that my Republican colleagues would read them and take them to heart.

Mr. President, I ask unanimous consent to print the remarks of the Interfaith Alliance forum in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REMARKS OF FORUM PARTICIPANTS—THE FORUM TO DISCUSS THE RECENT INJECTION OF RELIGION INTO THE JUDICIAL NOMINATIONS PROCESS, JULY 29, 2003

PARTICIPANTS: LEADERS OF THE INTERFAITH ALLIANCE: THE REV. C. WELTON GADDY, RABBI JACK MOLINE, FATHER ROBERT DRINAN, THE REV. CARLTON VEAZEY, AND THE RIGHT REV. JANE HOLMES DIXON; SENATOR PATRICK LEAHY; SENATOR RICHARD DURBIN.

Senator LEAHY. First I want to thank everybody who has come here today, and I certainly appreciate so much the religious leaders who have really come together and united on one thing, to condemn the injection of religious smears into the judicial nomination process.

Partisan political groups have used religious intolerance and bigotry to raise money and to publish and broadcast dishonest ads that falsely accuse Democratic senators of being anti-Catholic. I cannot think of anything in my 29 years in the Senate that has angered me or upset me so much as this. One recent Sunday I emerged from Mass to learn later that one of these advocates had been on C–SPAN at the same time that morning to brand me an anti-Christian bigot.

Now, as an American of Irish and Italian heritage, I remember my parents talking about days I thought were long past, when Irish Catholics were greeted with signs that told them they did not need apply for jobs. Italians were told that Americans did not want them or their religious ways. This is what my parents saw, and a time that they lived to see be long passed. And my parents, rest their souls, thought this time was long past, because it was a horrible part of U.S. history, and it mocks the pain—the smears we see today mock the pain and injustice of what so many American Catholics went through at that time. These partisan hate groups rekindle that divisiveness by digging up past intolerances and breathing life into that shameful history, and they do it for short-term political gains. They want to subvert the very constitutional process designed to protect all Americans from prejudice and injustice.

It is saddening, and it's an affront to the Senate as well as to so many, when we see senators sit silent when they are invited to disavow these abuses. These smears are lies, and like all lies they depend on the silence of others to live, and to gain root. It is time for the silence to end. The Administration has to accept responsibility for the smear campaign; the process starts with the President. We would not see this stark divisiveness if the President would seek to unite, instead of to divide, the American people and the Senate with his choices for the federal courts. And those senators who join in this kind of a religion smear: they may do it to chill debate on whether Mr. Pryor can be a fair and impartial judge, but they do far more. They hurt the whole country. They hurt Christians and non-Christians. They hurt believers and non-believers. They hurt all of us, because the Constitution requires judges to apply the law, not their political views, and instead they try to subvert the Constitution. And remember, all of us, no matter what our faith—and I'm proud of mine—no matter what our faith, we are able to practice it, or none if we want, because of the Constitution. All of us ought to understand that the Constitution is there to protect us, and it is the protection of the Constitution that has seen this country evolve into a tolerant country. And those who would try to put it back, for short-term political gains, subvert the Constitution, and they damage the country.

Now this nominee, Mr. Pryor, is an active politician. He has been particularly active on several political issues that divide Americans. And this administration has acknowledged that it selects nominees on the basis of their ideologies. So when this or other nominees are asked about their views and statements, whether it's about Roe v. Wade or the flawed administration of the death penalty, they are being asked legitimate questions that the White House itself has already considered in their selection. Senators of course have an equal right to inform themselves about their ideologies. And those senators do us all a disservice, they do a disservice to this great and wonderful institution, when they charge that there is a religious test for nominees. The record itself reputes that. Democratic senators have joined in confirming 140 of President Bush's judicial nominees. Now you'd have to guess that most of these nominees, chosen by President Bush and confirmed by Democratic senators, have been Republicans. Most, presumably, share the Administration's right-to-life philosophy. No doubt, a large number of the 140 are Christians, and of course, we would have to assume some are Catholics.

I appreciated Senator Durbin's courage when he spoke the truth about these falsehoods, and I appreciate the courage of the religious leaders we will hear from today, and I welcome Reverend Dr. Welton Gaddy, the president of The Interfaith Alliance. The Alliance has stood up on important legal issues on behalf of Americans of many different faiths. Remember, as Americans, this is one of the things that makes us free and the nation that we are—the diversity that comes from our various religious beliefs. The first Amendment encompasses so many different things: the freedom of speech, the freedom to practice any religion you want, or none if you want. We are not a theocracy, we are a democracy. And because we are a democracy, all of us, especially those who may practice a minority religion, get a chance to practice it. I'm glad to see Father Drinan here. Father Drinan is a professor of law at Georgetown and has been a member of Congress, but more importantly than that he has been a friend of mine since I was a teenager. We first met when I was a college student, and we talked about the fact that I wanted to go to law school. And we're fortunate to have with us today the Reverend Carlton Veazey, and the Right Reverend Jane Holmes Dixon, retired Episcopal Bishop from Washington National Cathedral. And the Bishop has told me she now has a son in Vermont. I admired her before, and I admire her even more now, for that. And Rabbi Jack Moline of Northern Virginia has joined us. So Revered, why don't I turn it over to you now.

The Rev. C. WELTON GADDY. Welcome to this Press and Hill Staff Briefing. My names is Welton Gaddy. I serve as President of The Interfaith Alliance, a national, grassroots, non-partisan, faith-based organization of 150,000 members who come from over 65 different religious traditions. The Interfaith Alliance promotes the positive and healing role of religion in public life and challenges all who seek to manipulate or otherwise abuse religion for sectarian or partisan political purposes.

Last Wednesday, the Senate Judiciary Committee's discussion on William Pryor's nomination to the 11th Circuit Court of Appeals in Atlanta deteriorated into a dramatic demonstration of the inappropriate intermingling of religion and politics that raised serious concerns about the constitutionally guaranteed separation of the institutions of religion and government. Such a meshing of religion and politics in the rhetoric of the Senate Judiciary Committee cheapens religion and diminishes the recognized authority

of the Committee to speak on matters of constitutionality. The debate of that day, though alarming and disturbing, has created a teachable moment in which we will do well to look again at the appropriate role of religion in such a debate. That is why we are here this morning.

Religion plays a vital role in the life of our nation. Many people enter politics motivated by religious convictions regarding the importance of public service. Religious values inform an appropriate patriotism and inspire political action. But a person's religious identity should stand outside the purview of inquiry related to a judicial nominee's suitability for confirmation. The Constitution is clear: There shall be no religious test for public service.

Within a partisan political debate, it is out of bounds for anyone to pursue a strategy of establishing the religious identity of a judicial nominee to create divisive partisanship. That, too, is an egregious misuse of religion and a violation of the spirit of the constitution. Even to hint that a judiciary committee member's opposition to a judicial nomination is based on the nominee's religion is cause for alarm. How did we get here?

In recent years, some religious as well as political leaders have advanced the theory that the authenticity of a person's religion can be determined by that person's support for a specific social-political agenda. So severe has been the application of this approach to defining religious integrity that divergence from an endorsement of any one issue or set of issues can lead to charges of one not being a ''good'' person of faith.

The relevance of religion to deliberations of the Judiciary Committee should be twofold: one, a concern that every judicial nominee embraces by word and example the religious liberty clause in the constitution that protects the rich religious pluralism that characterizes this nation and, two, a concern that no candidate for the judiciary embraces an intention of using that position to establish a particular religion or religious doctrine. In other words the issue is not religion but the constitution. Religion is a matter of concern only as it relates to support for the constitution.

Make no mistake about it, there are people in this nation who would use the structures of government to establish their particular religion as the official religion of the nation. There are those who would use the legislative and judicial processes to turn the social-moral agenda of their personal sectarian commitment into the general law of the land. The Senate Judiciary Committee has an obligation to serve as a watchdog that sounds no uncertain warning when such a philosophy seeks endorsement within the judiciary.

It is wrong to establish the identity of a person's religion as a strategy for advancing or defeating that person's nomination for a judgeship. However, it is permissible, even obligatory, to inquire about how a person's religion impacts that person's decisions about upholding the constitution and evaluating legislation. When a candidate for a federal bench has said, as did the candidate under consideration last Wednesday, in an address in the town in which I pastor, ''our political system seems to have lost God'' and declares that the ''political system must remain rooted in a Judeo-Christian perspective of the nature of government and the nature of man,'' there is plenty for this Committee to question.

Every candidate coming before this Committee should be guaranteed confirmation or disqualification apart from the candidate's religious identity as a Baptist, a Catholic, a Buddhist or a person without religious identification. What is important here is a candidate's pledge to defend the constitution. And, that pledge should be buttressed by a record of words and actions aimed not at attacking the very religious pluralism that the candidate is being asked to defend but rather to continuing a commitment to the highest law of the land.

I felt grimy after listening to distinctions between a ''good Catholic'' and a ''bad Catholic.'' I know that language; I heard it in the church of my childhood where we defined a ''good Baptist'' as one who tithed to the church, didn't smoke, didn't dance and attended church meetings on Sunday evening and a ''bad Baptist'' as one who didn't fit that profile. The distinctions had nothing to do with the essence of the Christian tradition and the content of Baptist principles. It is not a debate that is appropriate or necessary in the Chamber of the United States Senate.

The United States is the most religiously pluralistic nation on earth. The Interfaith alliance speaks regularly in commendation of ''One Nation—Many Faiths.'' For the sake of the stability of this nation, the vitality of religion in this nation, and the integrity of the Constitution, we have to get this matter right. Yes, religion is important. Discussions of religion are not out of place in the judiciary committee or any public office. But evaluations of candidates for public office on the basis of religion are wrong and there should be no question that considerations of candidates who would alter the political landscape of America by using the judiciary to turn sectarian values into public laws should end in rejection.

The crucial line of questioning should revolve not around the issue of the candidate's personal religion but of the candidate's support for this nation's vision of the role of religion. If the door to the judiciary must have a sign posted on it, let the sign read that those who would pursue the development of a nation opposed to religion or committed to a theocracy rather than a democracy need not apply.

In 1960, then presidential candidate John F. Kennedy addressed the specific matter of Catholicism with surgical precision and political wisdom, stating that the issue was not what kind of church he believed in but what kind of America he believed in. John F. Kennedy left no doubt about that belief: ''I believe in an America where the separation of church and state is absolute.'' Kennedy pledged to address issues of conscience out of a focus on the national interest not out of adherence to the dictates of one religion. He confessed that if at any point a conflict arose between his responsibility to defend the constitution and the dictates of his religious, he would resign from public office. No less a commitment to religious liberty should be acceptable by any judicial nominee or by members of the Senate Judiciary Committee who recommend for confirmation to the bench persons charged with defending the Constitution.

We have an impressive group of religious leaders here to address various issues relating to this topic. Also, another member of the Senate Judiciary Committee has joined us, Senator Durbin, and I wanted to say, as I recognize him for some comments, Senator how grateful we are, not only for your words in session on this committee, but for the tireless work you've done on charitable choice legislation.

Senator DURBIN. Thank you very much, and I appreciate those who have gathered this morning to address this very timely and very important issue.

It has been written that patriotism is the refuge of scoundrels. As of last week, we learned that religion is now the refuge of extremists. Those who are bringing us candidates who cannot stand on their own feet when it comes to their political positions, are now saying that hard questions about their politics are actually some sort of criticism about their religion belief. I have said publicly and privately to Senator Hatch, this has to end immediately.

Americans should understand that a person's religion, as the Constitution requires, should never be a qualification for public office. I am going to join Senator Leahy in offering an amendment to the Senate Judiciary Committee which states categorically that no witness or nominee can ever be asked their religion during the course of a committee hearing. I think we have crossed a line which is extremely sad, and watching last week as several of my colleagues came forward to explain Catholic doctrine was quite a treat, Father Drinan, to have my colleagues who are proud members of the Church of Christ, the Methodist Church, and the Church of Jesus Christ of Latter-day Saints, to explain to me what a ''good Catholic'' believes, was troubling. I think that that kind of conversation has no place in the public marketplace, and that Senator Leahy has led us in this committee, from the beginning objecting to this line of questioning, and we should put down the rule, hard and fast, once and for all, that whether the person who is inspiring this, Mr. Boyden Gray, in his scurrilous advertising campaign, or members of the United States Senate, who would seek to exploit the issue of religion to somehow justify the extremist views of their nominees: whoever the person is, they have no place in this important public debate.

I am a person of the Catholic faith. I was raised in that religion. I continue to go to Mass, to sometimes debate my church over issues. I believe that's my responsibility and my personal situation. I don't believe that should be part of the public debate, but my position on the issues might be, and for some of the senators to come forward and say, anytime a religious belief somehow reaches over into a political area it's out of bounds, you can't ask questions, well that's just plain wrong. If you happen to be a person who is of the Jewish religion, who keeps kosher in observance of religious belief, that is certainly your right to do and has little relevance to the political debate. But the position of a person on the death penalty, whether they're Jewish, Catholic, Protestant, nonbeliever, whatever their denomination, that certainly does have relevance to the national debate, and to say that we're not going to ask those questions because they somehow cross the line into religious belief, is to disqualify this committee from even considering the most important political issues. We can't let that happen.

I'm proud of the fact that I have nominated many judges of my own state, and that I have never used a litmus test on any of those judicial nominees. Though I am prochoice in my belief when it comes to vote on the issues before us, I have successfully nominated, and seen appointed, pro-life judges in my state, and I believe then as I do now that the fact that that's part of their religious belief is irrelevant. I hope that what we are saying and what we are talking about today is heard by members of the entire Senate, and I hope that we will adopt this rules change to say once and for all that we will not return to the shabby episode that we saw played out in the Senate Judiciary Committee last week.

Rev. GADDY. Senator Leahy has already introduced the members of the panel who will come and speak now; I will simply recognize them. Rabbi Jack Moline.

Rabbi JACK MOLINE. I am Rabbi Jack Moline, vice-chair at-large of the Interfaith Alliance. I am also on the back end of a summer cold, so I apologize for the huskiness of my voice.

The ''Father of our Country,'' George Washington, was a surveyor by trade. Part of his duties included the determination of exactly where the property of one owner left off and the other owner began. You might wonder what possible difference a few inches, even a few feet in either direction would make to a farmer with acres of land. But Washington knew as we all know that crops do not grow only in the center of a field, and that cattle do not graze only a distance from the fence, and that injuries do not always occur close to the barn. Good surveying produces good boundaries. And good boundaries keep good neighbors from unnecessary conflict.

As a rabbi, I have studied similar boundary issues in the Talmud. Entire sections are taken up discussing the boundaries between properties, between businesses, between Sabbath and weekdays, between the holy and the profane. Violating those boundaries throws a system into turmoil. Preserving them avoid unnecessary conflict.

We Americans have become experts in testing boundaries. You can make your own list of the boundaries we have tried to survey, and where we have been successful and where we have not. In culture, in business, in public policy and in politics, the lines that separate one domain from another have been confronted by those who wish to preserve them and by those who wish to redraw them.

When the Bill of Rights of our Constitution established what Thomas Jefferson wisely called the wall of separation between church and state, it created a two-hundred-year-old tradition of surveying that boundary, trying to find the exact place to keep good neighbors from unnecessary conflict.

The Senate Judiciary Committee failed in their latest attempt last week when Alabama Attorney General William Pryor, nominee for a federal judgeship, was asked by a supporting Senator about his religious affiliation. The result, as you have seen, was an unnecessary conflict between good neighbors. In fact, we are counting our blessings that the Capitol Police were not called to intervene in the ensuing arguments.

The religious beliefs of a nominee are relevant only to the extent that they interfere with his or her ability to support and defend the Constitution of the United States. Frankly, I would be alarmed to see the influences of religious conviction expunged from any aspect of American government. And I think it is entirely relevant to ask any candidate for the executive, legislative or judiciary if personal convictions would interfere with the ability to support and defend the Constitution and its resultant laws as they exist today.

Frankly, that is the relevant question—not a question of affiliation. Do the values, beliefs or proclivities that Mr. Pryor or anybody else holds prevent him from meeting the responsibilities of the office. The question is about his beliefs and no one else's. By affixing a label to the question and generalizing the issue, the legitimate business of the Senate Judiciary Committee was catapulted onto the other side of that carefully surveyed boundary. And lest you think the fault lies only on one side, the subsequent responses of opposing senators are a good indication of the reason we rely on articulated rules in our society and not good will.

It is time to return to the tradition of Washington and Jefferson and survey again that necessary boundary. And once it has been reestablished, then it behooves both the Senators and the nominees they examine to respect the values on which this country was founded.

Rev. GADDY. Now I'll recognize Father Robert Drinan.

Father ROBERT DRINAN. In the Constitution of Massachusetts there's a beautiful sentence about how judges are supposed to be picked. Judges shall be selected from those ''who are as impartial as the lot of humanity will allow.'' Isn't that a nice theological thing; we're all corrupted, ''as the lot of humanity will allow.'' And in the Constitution of the United States there's only one reference to religion, and it's very pertinent this morning, Article six says ''No religious test shall ever be applied for public office''

Consequently, when we're thinking about what we are trying to decide or think about in the Senate, we must remember the shades of Justice Brandeis. You recall that his confirmation was delayed, they never said openly that he would be the first Jew but it was always there, and I said that shame as a leader of the Americana Bar Association that the ABA opposed Justice Brandeis, and underneath, it was his religion.

I have here the full hearing on this man who desires to be a judge, and if you read it in full you'd say that the Senate is fully entitled to exercise its constitutional privilege. They have to give advice and consent. Advice and consent. They have broad discretion. And if they think he wouldn't be impartial, that he wouldn't be a good judge, they are fully entitled to say no. And during the centuries the Senate has said no to too many of the president's nominees.

What shall we say about this individual? You can read it for yourself. He lacks judicial temperament, in my view. He's so scalding and so one-sided. He believes in school prayer. He called the Supreme Court ''nine octogenarian lawyers,'' and at 41 he's a hard-charging conservative activist, and the senators are quite able, under their powers, to say ''we don't think that he is appropriate.'' Mr. Pryor is negative on Section Five of the Voting Rights Act, and has clashed with the Justice Department, so let's take a hypo. Law professors love hypos. Suppose there was a group of Catholics and non-Catholics in this country, who would say that Mr. Pryor is very much in favor of the death penalty and that comes from his religion. Well, it wouldn't be on solid ground, because the Pope has opposed the death penalty, the Catholic catechism and the Catholic bishops with unusual activity and vigor have opposed the death penalty in any form.

Mr. Pryor defies all of that. Should we say he's a bad Catholic? And I would say that if people use that and his faith saying that he's defying the Church, that would be an appropriate reason to vote no. They have to vote yes or no according to what the Constitution says, and it seems to me that the Senate has many, many reason to say that this individual is not ready or he's not appropriate. They could easily find, they could easily say, in the words of the Massachusetts Constitution, that he is not 'as impartial as the lot of humanity will allow.''

Rev. GADDY. Now Reverend Carton Veazey.

The Rev. CARLTON VEAZEY. Thank you, Dr. Gaddy. Thank you also, Senator DURBIN and Senator LEAHY, for sharing this time. I'm Reverend Carlton Veazey, President of the Religious Coalition for Reproductive Choice, founded in 1973 as a result of the Roe v. Wade decision. We have over forty religious organizations and denominations in our coalition. We represent over 20 million people. But I'm not here to talk about choice. I'm here to talk about religious freedom. Because that is the issue, and that is what we in the coalition strongly believe. Because we are diverse, and all of our denominations, we all agree on a woman's right to choose, but we also understand that we have different theological positions as relates to that issue, and that is the strength of our coalition.

The Religious Coalition was founded 30 years ago. Men of faith, and who are profaith, we work together in harmony because we respect each other's beliefs. We don't hold the same view about abortion rights, but we all agree that this is a matter of conscience and belief. In this pluralistic nation, we agree to respect different views and decisions. The nominee's pronouncements on reproductive choice show no understanding of the pluralism that makes this nation great. He's not unqualified for the bench because of his religion, but because of some views that he lacks judicial temperament, and it's shown he would impose his personal views regardless of the law, and does not respect the basic principle of religious freedom on which this nation was founded.

Conservatives are arguing that there is a religious litmus test about abortion rights and that determines who gets appointed and who does not. That's nonsense. There is no correct position. Catholics and people of all religions have different views on abortion, as the organization Catholics for Free Choice, which is a part of our coalition. Many Catholics disagree with the church's stance, and many Catholics practice birth control and have abortions. But the main thing is to understand that religion has no place in making this decision. These senators, who have tried so courageously to protect that, to protect us from becoming a theocratic government, to protect us from just one view.

Catholics today have the freedom to exercise prudential judgment, and to decide how best to interpret the range of teachings and principles contained in the Catholic canon, as Father Drinan pointed out. Thus some Catholics believe that abortion, while a serious moral issue, should not be illegal, while others believe that the taking of human life in war or capital punishment is morally evincible, in spite of Papal pronouncements against both.

I was interested in Dr. Gaddy when he talked about Baptists. I'm a Baptist; I was trying to measure myself up and see what kind of Baptist. I have become a better Baptist since the time that you were talking about them. But the thing is, that there is no ''good Baptist'' or ''bad Baptist.'' There is no ''Baptist position.'' There's no ''Baptist position.'' That's why you have, and I respect them for what they believe, but on the other hand that's not my position. I am not a Southern Baptist. Sometimes I don't know if I'm a Northern Baptist. Because the basic principle and tenet of the Baptist faith is that we have autonomy to believe in the way we understand God and understand our religious principles. So what I'm saying today is that simply, as it's been stated before, that no one should have a litmus test on their religion. I think he should be judged on his qualifications or her qualifications, and that alone. So the Religious Coalition wanted to come and to stand with you, to say that we also believe that you are doing the courageous thing and protecting religious freedom in our country. Thank you very much.

Rev. GADDY. The retired Bishop Pro Tempore of the Episcopal Diocese in Washington is also one who has served as chair of the board of The Interfaith Alliance, Bishop Jane Holmes Dixon, we are eager to hear you.

The Right Rev. JANE HOLMES DIXON. Good morning. It is a pleasure to be here with all of you this morning. I am the Right Reverend Jane Holmes Dixon, Immediate Past President of the Interfaith Alliance and the recently retired Bishop of the Episcopal Diocese of Washington, Pro tempore.

Before I begin my remarks, I would like to thank Senator Leahy for understanding the grave importance of why this discussion today is not only crucial for the future of the judicial nominations process, but in fact, a necessary reflection on the state of our democracy for all of us gathered here: religious leaders, elected officials, those who seek to serve the nation by entering into civil service, and finally, the countless people of this nation who are brought up to believe that any citizen, no matter what your gender, race or religion, will have an equal opportunity to serve this country, and will have the right to be treated equally under the law. The First Amendment of our Constitution—through its wise and steadfast guarantee that the government of the United States shall make no law to establish a religion and guarantees that it will not interfere with the free exercise of religion—expects nothing less than the religious freedom and liberty that this provides.

I believe that I speak for many when I say that last week's hearing of Alabama Attorney General Bill Pryor did not reflect well on the religious health of our nation and the guarantees of our Constitution.

Last week's hearing, a hearing that put on the record certain Senators defining what is true Catholicism—including even references to Rome—and other Senators having to defend their opposition to a nominee against charges of being anti-Catholic—was nothing short of a travesty and a major step back for interfaith relations in this nation. This becomes more troubling given the fact that there are indeed Roman Catholics on this committee who, according to their own remarks before the committee, consider themselves to be devout.

Not only must those who are nominated to become judges respect religious pluralism, equally important, those who are charged with confirming judges must respect the fact that within denominations there remains a wide spectrum of people who all hold varied beliefs. And they are all equally worthy of respect.

Senators do have an obligation to determine whether a judicial nominee will in fact respect those of all religious beliefs and those citizens amongst us who practice no religion at all. It is fair to ascertain whether a nominee will deliver justice based upon the Constitution of the United States—a document that unites us all and binds us together under a common law—or religious doctrine and sacred texts that were written for those who specifically subscribe to one religious tenet over another. This becomes more necessary when a nominee or his or her supporters take the unfortunate and even dangerous step of couching the nominee's positions on law and justice in terms of abiding by one faith tradition over another.

I am deeply disappointed that those charged with confirming nominees to serve the federal judiciary and thus the millions of Americans who will depend on those confirmed to uphold the concept of blind justice, would deploy the strategy of playing one religion against another—equating honest differences of opinion with being anti-religion. Whether it is anti-Catholic, anti-Baptist, anti-Sikh, anti-Jew, or anti-Muslim, this kind of divisive politics has no place in the Congress of the United States, period. We are a people who are free to choose how and when we worship.

Mr. LEAHY. I see the Senator from New York. How much time do I have remaining?

The PRESIDENT pro tempore. The Senator has 16 minutes 10 seconds.

Mr. LEAHY. I yield 6 minutes to the Senator from New York.

The PRESIDENT pro tempore. The Senator from New York is recognized for 6 minutes.

Mr. SCHUMER. Mr. President, first let me thank our colleague from Vermont for his heartfelt leadership on this issue. Every one of us knows how much he cares about these issues and how these charges—''charges'' is too dignified a word—these scurrilous attacks have gotten to him and moved him. We very much appreciate his integrity and courage and strength on these issues.

I rise in strong opposition to the Pryor nomination. This is a nomination where there are three strikes and you are out; three strikes against Mr. Pryor and he is out.

First, he is the most extreme nominee we have been asked to support. Second, there are questions about his credibility before the committee. And, third, the committee rules were violated to bring Mr. Pryor to the floor. So three strikes and Mr. Pryor is out.

Let me talk about each of the three briefly. First on extremism. This man is not a mainstream conservative. On issue after issue, he is in the most militant, hard, out-of-the-mainstream position, more than any judge. His views are an unfortunate stitching together of the worst parts of the most troubling nominees we have seen thus far.

He is not just out of the mainstream and extreme on one subject, he is extreme on almost everything. In a sense, he is the Frankenstein nominee, a stitching together of the worst parts of the worst nominees the President has sent us.

I will leave the issue of choice aside, other than to say that of the 120 judges I have voted for, the overwhelming majority were pro-life. So anyone on the other side who accuses anyone on this side of having a litmus test is just flying in the face of truth and honor and decency.

But what about other issues? He was the only attorney general who filed a brief to overturn parts of the Violence Against Women Act, a brief that went too far even for Justice Scalia—1 of 50. He was the only attorney general who ever supported Federal intervention in the States in Bush v. Gore.

He has voted to undermine the Clean Water Act. He has voted on issue after issue to turn the clock way back. On criminal justice issues, where I tend to side with my Republican colleagues at least as often as I side with my friends on the Democratic side, even here, he is way off the deep end.

He defended his State's practice of handcuffing prisoners to hitching posts in the hot Alabama sun for 7 hours without even giving them a drop of water to drink. And then, when the Supreme Court held this violated the 8th amendment, he criticized that decision.

His language is intemperate. He said he prayed to God that there would be no more Souters. This is not somebody we should elevate to this important part of the bench. He is way off the deep end. He is extreme in the extreme.

On this investigation, someone came forward after the nominee was questioned by my colleagues from Massachusetts and Wisconsin on the issue of this organization that raised money.

I don't like the system by which we raise money. But we should not hold Mr. Pryor to a different standard than seems to be all around the country. It isn't the raising of the money that bothers me. But when asked questions about it, there are eight statements he made that are highly suspect that are contradicted by documents sent to the committee. That doesn't mean he lied, but it means we ought to look into it because there is a possibility he did. We have not been able to complete that investigation.

To send this nominee to the bench whose credibility is in some suspicion—not proven certainly; he may be exonerated—is wrong and unfair. And it is a rush to judgment. I pled with my colleagues: Why can't we wait until this investigation is over and get the true facts? Maybe they are afraid of the answers because there has been a rush to judgment here. There is no danger to the Republic if we wait until September. Let the investigation finish, and then proceed with Mr. Pryor's nomination.

That is the second strike.

First, extreme; second, may not have been truthful with the committee; and then, the third—despite the promises of my good friend on the Judiciary Committee—we have violated rule 4 again.

This side of the aisle will not allow the rules of this body to be tampered with, and if for no other reason we will not proceed with Mr. Pryor's nomination today, and we will get overwhelming support on our side because the rules of the committee have been steamrolled at the whim of my good friend, the chairman. That is wrong.

That is the third strike. He is out.

One final point I would like to make. I am sorry my time is limited.

The argument about Mr. Pryor's religious background and discrimination—I am not going to get into Catholic doctrine. I will leave that to far better judges.

I ask unanimous consent for 2 additional minutes.

Mr. LEAHY. Yes.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator may proceed.

Mr. SCHUMER. I thank the ranking member and the Chair.

I am not going to get into Catholic doctrine. That is not my bailiwick, that is for sure. But let me say to my colleagues in a heartfelt way that you are good people. But the arguments you are using are the last refuge of scoundrels. You are not scoundrels. But the arguments you are using are debasing of our society and this Chamber. They are hits below the belt. You ought to be ashamed of using arguments like that.

When we had Mr. Estrada, we were accused of being anti-Hispanic. When

we had Mr. Pickering, we were accused of being anti-Baptist. When we had Priscilla Owen, we are accused of being anti-women. And now, of course, anti-Catholic with Mr. Pryor.

These arguments are the last refuge of scoundrels.

Again, my colleagues are not scoundrels, but the arguments they are using are, and they ought to look into their hearts before they use such arguments again. They are cheap. As my colleague said, they represent religious McCarthyism. And one comes to think on this side—and I think most Americans think—they cannot win on the merits, and so they do below-the-belt shots.

Every single nominee who comes up—it is not debating whether that nominee deserves to be on the bench but, rather, someone is attacking him or her because of their religion, because of their gender, or because of their ethnicity. We have gone further than that in this wonderful country of ours. Argue on the merits, not in these cheap and vulgar arguments which demean people who use them and won't prevail.

I will tell my colleagues this. Those arguments—I will tell this to Mr. Boyden Gray, and all the others as well whom my colleague from Illinois did such a good job with on television last night—those arguments strengthen resolve. They make us certain that we were right because we say to ourselves: They can't win on the merits; try below-the-belt shots.

The PRESIDING OFFICER. The Senator has used his additional time.

Mr. SCHUMER. I yield my time to the Senator from Vermont.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

UNANIMOUS CONSENT REQUEST—AMENDING STANDING RULES

Mr. LEAHY. Madam President, I alerted the distinguished Senate floor manager on this matter.

I send a resolution to the desk on behalf of myself and Senator DURBIN. The resolution says that in any proceeding of a committee considering a nomination made by the President to the U.S. Senate, it shall not be in order to ask any question of the nominee relating to the religious affiliation of the nominee.

With that, Madam President, I send a resolution to the desk to amend the Standing Rules of the Senate to provide that it is not in order in a committee to ask questions regarding a Presidential nominee's religious affiliation.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution amending the Standing Rules of the Senate to provide that it is not in order in a committee to ask questions regarding a Presidential nominee's religious affiliation.

Mr. LEAHY. Madam President, I ask unanimous consent for its immediate consideration; that the resolution be considered and agreed to, and the motion to reconsider be laid upon the table.

Mr. HATCH. Madam President, reserving the right to object—and I will object—let me make clear that when the issue of religion is raised, as it has been in the Pryor matter, and we think improperly so, and it seems to be continuously raised in some of these issues before the Judiciary Committee with various nominees—there are questions or statements like this: One Senator accused Attorney General Pryor of——

Mr. REID. Regular order.

Mr. HATCH. —''asserting an agenda of religious belief of your own.'' As long as those types of questions are going to be asked, I am going to have to object.

The PRESIDING OFFICER. Regular order has been called for.

Mr. HATCH. Then I object under those circumstances.

Mr. REID. Regular order.

The PRESIDING OFFICER. Objection is heard.

The resolution will go over 1 day under rule 14.

Who yields time?

Mr. LEAHY. Madam President, how much time is remaining to the Senator from Vermont?

The PRESIDING OFFICER. There are 4 minutes 52 seconds remaining.

Mr. LEAHY. I yield 4 minutes to my distinguished friend from Illinois who, incidentally, gave one of the finest speeches I ever heard last night on the Senate floor.

Mr. DURBIN. I thank the Senator from Vermont.

Madam President, I rise this morning in continuation of the debate which occurred last night. What has just occurred on the floor of the United States Senate is troubling. An attempt was made by the Senator from Vermont in which I joined to make it clear that no nominee of a President who appears before a committee of the Senate would ever be asked questions related to his or her religious affiliation.

This clear statement of constitutional principle was just rejected by the Republican chairman of the Senate Judiciary Committee. I don't understand that.

If we truly want to take religion out of this debate, if we want the debate to be confined to political beliefs and not a person's creed, why does the Republican chairman of the Senate Judiciary Committee object? I think the answer is obvious.

What we have seen in the William Pryor nomination is an attempt to use religion as a defense. It is almost part of the art of magic. How do you pull off a magic trick? You divert the attention of the audience to something else while you move your hand in another direction. In this case, what the Republicans are trying to do is to divert our attention from the radical political beliefs of William Pryor by saying that the real issue isn't politics; it is his Catholic faith. Frankly, that is not only an unfair argument. It is inaccurate.

Time and again, the Judiciary committee has approved President Bush's nominees for the Federal bench who have been Catholic, who have been pro-life, and, frankly, who have taken positions with which most of the Democratic members of the committee disagree. But in this case, despite the fact that William Pryor has reached a new level as a nominee in terms of his radical views and his experience, we are being accused of discriminating against him because of his religion.

The record will show that it was the Republican chairman of the committee who asked that William Pryor's religious affiliation be made part of the record. It was the chairman of the committee who used that important and now code phrase, ''deeply held religious beliefs,'' on more than one occasion. The record will also show that many of us who have questioned the background of William Pryor never raised his religion as an issue, nor should we.

I have listened to this debate on the floor of the Senate and in the Senate Judiciary Committee, and it troubles me greatly to think this body would now ignore the clear instruction and guidance of the U.S. Constitution, which says, in Article VI, that ''no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.''

I would warn my colleagues on the other side of the aisle that there is a strong sentiment in America that each of us should have the freedom to follow the religion of our conscience, that no one should ever be dictated to by this Government or any government as to their religious belief. And those who attempt to exploit religion to achieve political goals will, frankly, never be favored in this country, nor should they. That is what is at issue here. And for them to raise this as somehow a condemnation of William Pryor's religion, is troubling. C. Boyden Gray, former counsel to President Bush's father, last night on television said, although he was an Episcopalian in his own personal religious belief, he did not feel any problem running these ads suggesting about what a good Catholic believes.

We have had the same thing in the committee. Members of the committee who are not members of the Catholic faith have been professing theology.

Late last night, I spoke on the Floor to explain my deep disappointment about the debate in the Judiciary Committee surrounding the nomination of William Pryor.

That negative discourse has now spilled over to the floor of the U.S. Senate and in the advertisements placed in our Nation's newspapers and on radio airwaves.

I never thought that we would ever be in the position that we find ourselves in today where members of this chamber are debating some of the most

well settled and fundamental premises upon which our great Nation was founded.

Freedom from religious persecution is one of the pillars upon which our Nation and its Constitution rest, and there should be no debate about it.

In fact, our Founding Fathers thought it necessary to encapsulate that concept into the very text of the Constitution itself, in clause 3 of article VI.

That clause reads:

. . . no religious test shall ever be required as a qualification to any office or public trust under the United States.

It was General Charles Pinckney of South Carolina who, on August 20, 1787, introduced the provision at the Federal Convention that ultimately became part of the Constitution in Article VI. General Pinckney, like many of the pioneers, understood that religion can be abused by governments in divisive ways.

As early as the 17th Century, some Americans such as Roger Williams, expressed their objection to the common practice inherited from England of imposing a religious test for public office. However, by the beginning of the 18th Century, just about every Colony had enacted a law that limited eligibility for public office solely to members of certain denominations.

In Rhode Island, for example, one had to be a Protestant to become eligible for such office. In Pennsylvania, the law required a belief that God was ''the rewarder of the good and punisher of the wicked.'' North Carolina disqualified from office anyone who denied ''the being of God or the truth of the Protestant religion, or the divine authority of either the Old or New Testament.''

The words of Oliver Ellsworth, a landholder who participated in the debates on December 17, 1787, capture the essence of the need for an affirmative prohibition now found in the Constitution. Ellsworth said:

Some very worthy persons . . . have objected against that clause in the constitution which provides, that no religious test shall ever be required as a qualification to any office or public trust under the United States. They have been afraid that this clause is unfavorable to religion. But my countrymen, the sole purpose and effect of it is to exclude persecution and to secure to you the important right of religious liberty. We are almost the only people in the world, who have a full enjoyment of the important right of human nature. In our country every man has a right to worship God in that way which is most agreeable to his conscience.

This morning, I am uncomfortable in offering this Resolution with my respected colleague, the Senator from Vermont and ranking member of the Senate Judiciary Committee, because I believe the rule change we seek with this Resolution should never be needed in a Chamber where every Member has sworn to uphold and defend the Constitution.

Yet events of the past few weeks compel us to act today.

Our resolution would simply state that it is the rule of the Senate to prohibit the questioning by any Senator of a presidential nominee's religious affiliation. The rule would thus require us to carry out in practice the wise admonitions of our Founding Fathers.

I hope my colleagues will join Senator LEAHY and me in adopting this resolution.

The PRESIDING OFFICER. The Senator has used 4 minutes.

Mr. DURBIN. Madam President, I hope colleagues will join me in opposing this nomination.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I would like to speak about the meeting earlier this week with the Interfaith Alliance where they—Catholics, Protestants, and Jews—condemned the activities of having any Member of the Senate ask somebody their religion in a Senate meeting.

A few days ago we heard from a distinguished group of members of the clergy from a variety of churches and synagogues who serve as members of the Interfaith Alliance. The Alliance is a national, grassroots, non-partisan, faith-based organization of 150,000 members who come from over 65 religious traditions. These men and women of faith promote the positive and healing role of religion in public life, and challenges all who seek to manipulate or otherwise abuse religion for sectarian or partisan political purposes. They came to the United States Capitol to denounce the despicable charges made against Senators, and to urge, as many of us have, that this involvement of religion in the confirmation process come to an end. I would like to enter into the record the statements of some of the participants in the event where the Alliance's members came together for that purpose.

Specifically, I would like to have printed in the RECORD the remarks of Rev. Dr. C. Welton Gaddy, the President of the Interfaith Alliance, the remarks of Rabbi Jack Moline, the Vice-chair of the Alliance, and the remarks of the Right Reverend Jane Holmes Dixon, the Immediate Past President of the Alliance. These statements are moving and persuasive and important. I would hope that my Republican colleagues would read them and take them to heart.

The demagoguery, divisive and partisan politics being so cynically used by supporters of the President's most extreme judicial nominees needs to stop.

I ask unanimous consent to have those remarks by clergy printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(From Hill Briefing, July 29, 2003)

(Remarks by Rev. Dr. C. Welton Gaddy)

RELIGION AND THE SENATE JUDICIARY HEARING

Good morning. Welcome to this Press and Hill Staff Briefing. My name is Welton Gaddy. I serve as President of the Interfaith Alliance, a national, grassroots, non-partisan, faith-based organization of 150,000 members who come from over 65 different religious traditions. The Interfaith Alliance promotes the positive and healing role of religion in public life and challenges all who seek to manipulate or otherwise abuse religion for sectarian or partisan political purposes.

Last Wednesday, the Senate Judiciary Committee's discussion on William Pryor's nomination to the 11th Circuit Court of Appeals in Atlanta deteriorated into a dramatic demonstration of the inappropriate intermingling of religion and politics that raised serious concerns about the constitutionally guaranteed separation of the institutions of religion and government. Such a meshing of religion and politics in the rhetoric of the Senate Judiciary Committee cheapens religion and diminishes the recognized authority of the Committee to speak on matters constitutionality. The debate of that day, though alarming and disturbing, has created a teachable moment in which we will do well to look again at the appropriate role of religion in such a debate. That is why we are here this morning.

Religion plays a vital role in the life of our Nation. Many people enter politics motivated by religious convictions regarding the importance of public service. Religious values inform an appropriate patriotism and inspire political action. But a person's religious identity should stand outside the purview of inquiry related to a judicial nominee's suitability for confirmation. The Constitution is clear: there shall be no religious test for public service.

Within a partisan political debate, it is out of bounds for anyone to pursue a strategy of establishing the religious identity of a judicial nominee to create divisive partisanship. That, too, is an egregious misuse of religion and a violation of the spirit of the constitution. Even to hint that a judiciary committee member's opposition to a judicial nomination is based on the nominee's religion is cause for alarm. How did we get here?

In recent years, some religious as well as political leaders have advanced the theory that the authenticity of a person's religion can be determined by that person's support for a specific social-political agenda. So severe has been the application of this approach to defining religious integrity that divergence from an endorsement of any one issue or set of issues can lead to charges of one not being a ''good'' person of faith.

The relevance of religion to deliberations of the Judiciary Committee should be twofold: one, a concern that every judicial nominee embraces by word and example the religious liberty clause in the constitution that protects the rich religious pluralism that characterizes this nation and, two, a concern that no candidate for the judiciary embraces an intention of using that position to establish a particular religion or religious doctrine. In other words the issue is not religion but the constitution. Religion is a matter of concern only as it relates to support for the constitution.

Make no mistake about it, there are people in this nation who would use the structures of government to establish their particular religion as the official religion of the nation. There are those who would use the legislative and judicial processes to turn the social-moral agenda of their personal sectarian commitment into the general law of the land. The Senate Judiciary Committee has an obligation to serve as a watchdog that sounds no uncertain warning when such a philosophy seeks endorsement within the judiciary.

It is wrong to establish the identity of a person's religion as a strategy for advancing

or defeating that person's nomination for a judgeship. However, it is permissible, even obligatory, to inquire about how a person's religion impacts that person's decisions about upholding the constitution and evaluating legislation. When a candidate for a federal bench has said, as did the candidate under consideration last Wednesday, in an address in the town in which I pastor, ''our political system seems to have lost God'' and declares that the ''political system must remain rooted in a Judeo-Christian perspective of the nature of government and the nature of man,'' there is plenty for this Committee to question.

Every candidate coming before this Committee should be guaranteed confirmation or disqualification apart from the candidate's religious identity as a Baptist, a Catholic, a Buddhist or a person without religious identification. What is important here is a candidate's pledge to defend the constitution. And, that pledge should be buttressed by a record of words and actions aimed not at attacking the very religious pluralism that the candidate is being asked to defend but rather to continuing a commitment to the highest law of the land.

I felt grimy after listening to distinctions between a ''good Catholic'' and ''bad Catholic.'' I know that language; I heard it in the church of my childhood where we defined a ''good Baptist'' as one who tithed to the church, didn't smoke, didn't dance and attended church meetings on Sunday evening and a ''bad Baptist'' as one who didn't fit that profile. The distinctions had nothing to do with the essence of the Christian tradition and the content of Baptist principles. It is not a debate that is appropriate or necessary in the Chamber of the United States Senate.

The United States is the most religiously pluralistic nation on earth. The Interfaith Alliance speaks regularly in commendation of ''One Nation—Many Faiths.'' For the sake of the stability of this nation, the vitality of religion in this nation, and the integrity of the Constitution, we have to get this matter right. Yes, religion is important. Discussions of religion are not out of place in the judiciary committee or any public office. But evaluations of candidates for public office on the basis of religion are wrong and there should be no question that considerations of candidates who would alter the political landscape of America by using the judiciary to turn sectarian values into public laws should end in rejection.

The crucial line of questioning should revolve not around the issue of the candidate's personal religion but of the candidate's support for this nation's vision of the role of religion. If the door to the judiciary must have a sign posted on it, let the sign read that those who would pursue the development of a nation opposed to religion or committed to a theocracy rather than a democracy need not apply.

In 1960, then presidential candidate John F. Kennedy addressed the specific matter of Catholicism with surgical precision and political wisdom, stating that the issue was not what kind of church he believed in but what kind of America he believed in. John F. Kennedy left no doubt about that belief: ''I believe in an America where the separation of church and state is absolute.'' Kennedy pledged to address issues of conscience out of a focus on the national interest not out of adherence to the dictates of one religion. He confessed that if at any point a conflict arose between his responsibility to defend the constitution and the dictates of his religion, he would resign from public office. No less a commitment to religious liberty should be acceptable by any judicial nominee or by members of the Senate Judiciary Committee who recommend for confirmation to the bench persons charged with defending the Constitution.

STATEMENT OF RABBI JACK MOLINE, OF THE INTERFAITH ALLIANCE

(July 29, 2003)

I am Rabbi Jack Moline, Vice-chair at-large of The Interfaith Alliance. I am also on the back end of a summer cold, so please forgive the huskiness of my voice.

The father of our country, George Washington, was a surveyor by trade. Part of his duties included the determination of exactly where the property of one owner left off and the other owner began. You might wonder what possible difference a few inches, even a few feet in either direction would make to a farmer with acres of land. But Washington knew as we all know that crops do not grow only in the center of a field, and that cattle do not graze only a distance from the fence, and that injuries do not always occur close to the barn. Good surveying produces good boundaries. And good boundaries keep good neighbors from unnecessary conflict.

As a rabbi, I have studied similar boundary issues in the Talmud. Entire sections are taken up discussing the boundaries between properties, between businesses, between Sabbath and weekdays, between the holy and the profane. Violating those boundaries throws a system into turmoil. Preserving them avoids unnecessary conflict.

We Americans have become experts in testing boundaries. You can make your own list of the boundaries we have tried to survey, and where we have been successful and where we have not. In culture, in business, in public policy and in politics, the lines that separate one domain from another have been confronted by those who wish to preserve them and by those who wish to redraw them.

When the Bill of Rights of our Constitution established what Thomas Jefferson wisely called the wall of separation between church and state, it created a two-hundred-year-old tradition of surveying that boundary, trying to find the exact place to keep good neighbors from unnecessary conflict.

The Senate Judiciary Committee failed in their latest attempt last week when Alabama Attorney General William Pryor, nominee for a Federal judgeship, was asked by a supporting Senator about his religious affiliation. The result, as you have seen, was an unnecessary conflict between good neighbors. In fact, we are counting our blessings that the Capitol Police were not called to intervene in the ensuing arguments.

The religious beliefs of a nominee are relevant only to the extent that they interfere with his or her ability to support and defend the Constitution of the United States. Frankly, I would be alarmed to see the influences of religious conviction expunged from any aspect of American government. And I think it is entirely relevant to ask any candidate for the executive, legislative or judiciary if personal convictions would interfere with the ability to support and defend the Constitution and its resultant laws as they exist today.

Frankly, that is the relevant quesion—not a question of affiliation. Do the values, beliefs or proclivities that Mr. Pryor or anybody else holds prevent him from meeting the responsibilities of the office. The question is about his beliefs and no one else's. By affixing a label to the question and generalizing the issue, the legitimate business of the Senate Judiciary Committee was catapulted onto the other side of that carefully surveyed boundary. And lest you think the fault lies only on one side, the subsequent responses of opposing Senators are a good indication of the reason we rely on articulated rules in our society and not good will.

It is time to return to the tradition of Washington and Jefferson and survey again that necessary boundary. And once it has been reestablished, then it behooves both the Senators and the nominees they examine to respect the values on which this country was founded.

REMARKS OF THE RIGHT REVEREND JANE HOLMES DIXON

(July 29, 2003)

Good morning. It is a pleasure to be here with all of you this morning. I am the Right Reverend Jane Holmes Dixon, Immediate Past President of The Interfaith Alliance and the recently retired Bishop of the Episcopal Diocese of Washington, Pro tempore.

Before I begin my remarks, I would like to thank Senator LEAHY for understanding the grave importance of why this discussion today is not only crucial for the future of the judicial nominations process, but in fact, a necessary reflection on the state of our democracy for all of us gathered here: religious leaders, elected officials, those who seek to serve the nation by entering into civil service, and finally, the countless people of this Nation who are brought up to believe that any citizen, no matter what your gender, race or religion, will have an equal opportunity to serve this country, and will have the right to be treated equally under the law. The First Amendment of our Constitution—through its wise and steadfast guarantee that the government of the United States shall make no law to establish a religion and guarantees that it will not interfere with the free exercise of religion—expects nothing less than the religious freedom and liberty that this provides.

I believe that I speak for many when I say that last week's hearing of Alabama Attorney General Bill Pryor did not reflect well on the religious health of our nation and the guarantees of our Constitution.

Last week's hearing, a hearing that put on the record certain Senators defining what is true Catholicism—including even references to Rome—and other Senators having to defend their opposition to a nominee against charges of being anti-Catholic—was nothing short of a travesty and a major step back for interfaith relations in this nation. This becomes more troubling given the fact that there are indeed Roman Catholics on this committee who, according to their own remarks before the committee, consider themselves to be devout.

Not only must those who are nominated to become judges respect religious pluralism, equally important, those who are charged with confirming judges must respect the fact that within denominations there remains a wide spectrum of people who all hold varied beliefs. And they are all equally worthy of respect.

Senators do have an obligation to determine whether a judicial nominee will in fact respect those of all religious beliefs and those citizens amongst us who practice no religion at all. It is fair to ascertain whether a nominee will deliver justice based upon the Constitution of the United States—a document that unites us all and binds us together under a common law—or religious doctrine and sacred texts that were written for those who specifically subscribe to one religious tenet over another. This becomes more necessary when a nominee or his or her supporters take the unfortunate and even dangerous step of couching the nominee's positions on law and justice in terms of abiding by one faith tradition over another.

I am deeply disappointed that those charged with confirming nominees to serve the federal judiciary and thus the millions of Americans who will depend on those confirmed to uphold the concept of blind justice,

would deploy the strategy of playing one religion against another—equating honest differences of opinion with being anti-religion. Whether it is anti-Catholic, anti-Baptist, anti-Sikh, anti-Jew, or anti-Muslim, this kind of divisive politics has no place in the Congress of the United States, period. We are a people who are free to choose how and when we worship.

The PRESIDING OFFICER. The Senator from Utah controls the remainder of the time.

The Senator from Utah.

Mr. HATCH. Madam President, I have been listening to this. I have to tell you, it is apparent that my friends on the other side who are stung a little bit by this. They should be. They should be. Naturally, they don't want religion mentioned because they are referring to it all the time, and it is almost always in the context of abortion.

Almost every question that Democrats ask those whom they consider controversial nominees is about abortion. Naturally, they cannot do that to every nominee, even though I believe some of them would like to. So they are selective in choosing certain nominees who have deeply held religious beliefs.

But let me just give you a few examples of why I am convinced General Pryor's religion was put squarely at issue during his hearing, and why, at the end of the hearing, I brought up the issue of religion—because I was sick and tired of hearing this kind of stuff, because when Democrats were questioning his deeply held beliefs, they really were questioning his religious beliefs.

One Senator—I believe it was Senator DURBIN from Illinois—accused General Pryor, during the hearing, of ''asserting an agenda of your own, a religious belief of your own. . . .''

In his opening statement, Senator SCHUMER stated:

> [I]n General Pryor's case his beliefs are so well known, so deeply held, that it is very hard to believe, very hard to believe that they are not going to deeply influence the way he comes about saying, ''I will follow the law.'' And that would be true of anybody who had very, very deeply held views.

I think he had a right to say that, but the point is, there isn't anybody who doesn't understand, when you talk about deeply held views, what those are are religious beliefs. If they don't understand it, then they—well, I will not comment about that.

At another point, on the subject of Roe v. Wade—which came up in almost every question to Pryor from a Democratic questioner—Senator SCHUMER said:

> I for one believe that a judge can be pro-life, yet be fair, balanced, and uphold a woman's right to choose, but for a judge to set aside his or her personal view, the commitment to the rule of law must clearly supersede his or her personal agenda. . . . But based on the comments Attorney General Pryor has made on this subject, I have got some real concerns that he cannot, because he feels these views so deeply and so passionately.

There is only one reason he feels those views so deeply and passionately, and that is because of his religion and his religious beliefs. He is a traditional, conservative pro-life Catholic. I don't think my colleagues are against the Catholic Church, but it sure seems as if they are against the traditional pro-life conservative Catholic—on a selective basis, of course, because they cannot do this to everybody.

Another Senator told General Pryor:

> . . . I think the very legitimate issue in question with your nomination is whether you have an agenda, that many of the positions which you have taken reflect not just an advocacy but a very deeply held view and a philosophy, which you are entitled to have, but you are also not entitled to get everyone's vote.

General Pryor is an openly pro-life Catholic. To me, these questions and comments about his deeply held personal views put his religious beliefs squarely in issue.

Some Democrats say that they have, generally, voted to confirm about 140 of President Bush's judicial nominees. And they say some may have been pro-life Catholics, so our charges that they refuse to confirm pro-life Catholics are baseless. But here's what they're really saying: if you're a pro-life Catholic, you'd better keep quiet during your entire legal or political career before you come before us on the Judiciary Committee, because if you have made public statements that indicate you actually believe in official Catholic doctrine or are actually pro-life, that's when you are in real trouble with us. If you are smart, you will keep your religious beliefs to yourself, and maybe we won't ask about them directly or indirectly. So at best, what some Democrats seem to want is a gag order enforced on nominees who have publicly espoused pro-life positions, even in the context of political campaigns. At worse, maybe some would rather that those publicly profess pro-life sentiments be excluded from public service—certainly service on the federal bench—altogether.

Let's assume that, as various polls seem to show, the American people are roughly equally divided on the policy questions regarding abortion. There's no question that tens of millions of Catholics, following the official doctrine of the church, and millions of other religious believers of all denominations in this country are on the pro-life side of that divide. An abortion litmus test—which is really a religious litmus test, where pro-life views arise from a person's faith—effectively excludes judicial nominees from that side, from service on the Federal bench. That is wrong, particularly in the case of Bill Pryor, whose record of subordinating his personal beliefs to the law could not be clearer, and who, like Justice Owen, affirmed to our Committee that he would follow Roe v. Wade and other Supreme Court precedents with which he personally disagrees. He understands his role as a federal judge. It's time we act on a proper understanding of our role as Senators and vote for or against his confirmation.

We know that our Constitution prohibits religious tests for public office. Nobody would propose a law that excluded persons of certain religions from certain federal offices. But what can't be done overtly is no less objectionable when done indirectly.

Article VI of the Constitution states, ''[N]o religious test shall ever be required as a qualification to any office or public trust under the United States.'' I do not believe that any Senator would intentionally impose a religious test on the President's judicial nominees, and I do not think any Senators are guilty of anti-religion bias. However, I am deeply concerned that some are indirectly putting at issue the religious beliefs of several judicial nominees—nominees who are avowedly pro-life as a result of their religious beliefs.

The most recent example emerged during the debate on the nomination of Bill Pryor to the Eleventh Circuit. During his confirmation hearing, General Pryor was asked repeatedly by some Committee Democrats about what one senator called his ''very, very deeply held views.'' In fact, in the portion of his opening statement addressing Roe v. Wade, one of my Democratic colleagues on the judiciary Committee stated

> I for one believe that a judge can be pro-life, yet be fair, balanced, and uphold a woman's right to choose, but for a judge to set aside his or her personal view, the commitment to the rule of law must clearly supersede his or her personal agenda. . . . But based on the comments Attorney General Pryor has made on this subject, I have got some real concerns that he cannot, because he feels these views so deeply and so passionately.

Another Senator accused General Pryor during the hearing of ''asserting an agenda of your own, a religious belief of your own. . . .'' And yet another Senator told General Pryor during the hearing:

> . . . I think the very legitimate issue in question with your nomination is whether you have an agenda, that many of the positions which you have taken reflect not just an advocacy but a very deeply held view and a philosophy, which you are entitled to have, but you are also not entitled to get everyone's vote.

Another colleague remarked:

> Virtually in every area you have extraordinarily strong views which continue and come out in a number of different ways. Your comments about Roe make one believe, could he really, suddenly, move away from those comments and be a judge?

I became concerned after these comments that General Pryor was essentially being questioned about his deeply held religious beliefs, and that is the only reason I myself questioned General Pryor on the subject of religion during his hearing. In my view, it was time to call it like I saw it. But let me make one thing absolutely clear: My questions were an attempt to prevent General Pryor, and any other judicial

nominees, from being subjected to a religious test. In no way, shape or form did I attempt, or would I ever attempt, to impose such a test.

General Pryor is an openly pro-life Catholic, so there is little doubt in my mind about the nature or source of his ''deeply held views.'' He has publicly stated on numerous occasions, including during his confirmation hearing, that he believes abortion is the taking of innocent human life. My colleagues seem to be arguing that because General Pryor feels passionately that abortion is morally wrong and has publicly expressed his views, he will be unable to set aside his personal views on the subject and follow binding Supreme Court precedent as a judge. But General Pryor's record on the subject of abortion is crystal clear and beyond dispute. He has enforced the law despite his publicly expressed and conflicting personal beliefs.

For example, after the Alabama legislature passed a partial-birth abortion ban in 1997, General Pryor issued guidance to state law enforcement officials to ensure that the law was enforced consistent with the Supreme Court's 1992 decision in Planned Parenthood v. Casey. Although there was considerable outcry against his decision from the pro-life community, the ACLU praised General Pryor's decision, emphasizing that his order had ''[s]everly [l]imited'' Alabama's ban. He issued similar guidance after the Supreme Court's 2000 ruling in Stenberg v. Carhart, which struck down another state's ban on partial-birth abortion.

I doubt that any Supreme Court decision could be more personally distasteful to General Pryor than Stenberg v. Carhart. And he specifically said he disagreed with the decision while emphasizing that it was the law and he would enforce it. Can we ask more of a judicial nominee, than to demonstrate such objectivity and enforce a law so at odds with his personal beliefs? I urge my colleagues to judge General Pryor and other pro-life nominees on their record as it relates to abortion and not on the nominees' person beliefs on the subject.

By the way, I am certainly not alone in my concern that the debate over General Pryor's nomination has put his religious beliefs at issue. The Mobile Register in a July 26 editorial wrote that :

> . . . the Democrats on the Senate Judiciary Committee have repeatedly asserted that Mr. Pryor would be incapable of enforcing the law . . . That's a serious charge, in effect saying that if somebody believes deeply, because of his religious faith, that abortion is morally wrong, then that person is unfit for a judgeship. But that onus is on the accusers to prove from Bill Pryor's record that he is thus hampered from enforcing the law. Mr. Pryor has much evidence on his side, but where is their evidence to the contrary? . . . To look at that record and still assert, as the Senate Democrats do, that the strength of Mr. Pryor's personal beliefs disqualifies him, is indeed, effectively, to say that his faith makes him ineligible for office. Their stance against him should anger all people of deep faith, of all religions.

In addition, Austin Rusc, President of the Catholic Family & Human Rights Institute, wrote in a letter dated July 29:

> ''I am deeply troubled by the recent turns of events in the U.S. Senate regarding Catholic nominees to the Federal Court. It appears to me that a faithful Catholic, that is one who upholds the Catholic teaching on the inviolability of innocent human life from conception onward, cannot be confirmed for the Federal bench by this Senate. It very clearly is a religious test for office, and therefore a violation of our Constitution. Moreover, it is an insult to millions of faithful Catholics in this country.

I also received a July 23 letter from the president and three other leaders of the Union of Orthodox Jewish Congregations of America that stated:

> As a community of religious believers committed to full engagement with modern American society, we are deeply troubled by those who have implied that a person of faith cannot serve in a high level government post that may raise issues at odds with his or her personal beliefs. There is little question in our minds that this view has been the subtext for some of the criticism of Mr. Pryor. We urge you and your colleagues to empathetically reject this aspersion and send a clear message that such suggestions, whether explicit or implied, are beyond the pale of our politics.

I ask unanimous consent that a copy of the Register editorial be printed in the RECORD.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. HATCH. Any suggestions that a person with deeply held religious beliefs cannot be trusted to follow the law, despite a proven track record of doing just that, is unconstitutional. I will continue to fight any form of religious test, direct or indirect, as long as I am a Member of this Senate. I have stood up for the free exercise of religion time and time again, through such measures as the Religious Freedom Restoration Act. I am proud of my accomplishments, and I will continue in my quest to ensure that the free exercise of religion is a right that remains uncompromised for everyone—including judicial nominees.

I yield the floor.

EXHIBIT 1

[Mobile Register, July 26, 2003]

TO DENIGRATE PRYOR, HOW LOW CAN THEY GO?

On the matter of the judicial nomination of Alabama Attorney General Bill Pryor, it's time for his Democratic opponents to put up or shut up.

When all the smokescreens dissipate, the Senate Democrats' objections to Mr. Pryor come down to two: First, that his pro-life views are too ''extreme'' for him to be trusted to uphold laws that contradict those views, and second, that they have been denied ample time to investigate his fund-raising activities.

Let's take them one at a time. Much has been made of Mr. Pryor's supporters supposedly accusing his opponents of deliberate anti-Catholic bias. But that's not what the supporters have claimed. Instead, they've asserted—quite believably—that the critics' pro-choice litmus test amounts to the kind of ''religious test'' that, whether applied to Catholics (such as Mr. Pryor) or conservative Protestants, or for that matter members of any faith, are explicitly prohibited by the Constitution.

Too Catholic?: It's not merely Catholics who say Bill Pryor's faith is being unfairly used against him. The president and three other leaders of the Orthodox Jewish Union wrote this in a July 23 letter: ''As a community of religious believers committed to full engagement with modern American society, we are deeply troubled by those who have implied that a person of faith cannot serve in a high level government post that may raise issues at odds with his or her personal beliefs. There is little question in our minds that this view has been the subtext for some of the criticism of Mr. Pryor. . . . In our view, Mr. Pryor's record as Alabama's attorney general demonstrates his ability to faithfully enforce the law, even when it may conflict with his personal beliefs.''

Indeed, the Democrats on the Senate Judiciary Committee have repeatedly asserted that Mr. Pryor would be incapable of enforcing the law. Here's Senator Charles Schumer of New York: ''In General Pryor's case his beliefs are so well known, so deeply held, that it is very hard to believe—very hard to believe—that they are not going to deeply influence the way he comes about saying, 'I will follow the law,' and that would be true of anybody who had very, very deeply held views.''

Senator Richard Durbin of Illinois even suggested to Mr. Pryor directly that he was ''asserting an agenda of your own, a religious belief of your own, inconsistent with separation of church and state.''

That's a serious charge, in effect saying that if somebody believes deeply, because of his religious faith, that abortion is morally wrong, then that person is unfit for a judgeship.

But the onus is on the accusers to prove from Bill Pryor's record that he is thus hampered from enforcing the law. Mr. Pryor has much evidence on his side, but where is their evidence to the contrary? The Alabama AG, after all, is a white Republican who has taken the side of black Democrats in a suit filed by white Republicans. He is a man who has publicly intervened against the very Republican governor, Fob James, who first appointed him. And on two separate occasions he took stances, as the state's top legal officer, that angered some of his anti-abortion allies.

To look at that record and still assert, as the Senate Democrats do, that the strength of Mr. Pryor's personal beliefs disqualifies him, is indeed, effectively, to say that his faith makes him ineligible for office. Their stance against him should anger all people of deep faith, of all religions.

False testimony?: Senate Democrats also contend that Republicans have unfairly cut off their ''investigation'' into whether Mr. Pryor testified truthfully about fund-raising activities for the Republican Attorneys General Association—activities the Democrats themselves acknowledge were legal.

The truth is that the anti-Pryor forces are the ones whose tactics should be in question. Using a close associate of a man from whom Mr. Pryor recently secured a guilty plea to bribery charges, the Democratic committee staff obtained documents on July 2 that they claim raise questions about the AG's own committee testimony. (It is not clear how long they had been in contact with that associate, but some Republican senators accused them of knowing weeks in advance.)

The Democrats did not bother to tell Republicans about the documents until July 8. They did not interview former staffers of the Republican group until July 15, two days before the vote on Mr. Pryor was scheduled.

They have not yet put the original source under oath. And, despite being given three opportunities to question Mr. Pryor himself about the charges, Democrats declined all three times to question him.

On July 17, the day the committee was scheduled to vote on the nomination, the Democrats presented an ''investigation plan'' that did not include giving Mr. Pryor himself a chance to answer his accusers.

Not only that, but Republican Judiciary Committee Chairman Orrin Hatch announced that, as of yesterday, the committee had interviewed 20 witnesses, and that every one of them ''corroborated the testimony of General Pryor.''

In fact, said Chairman Hatch, ''what's notable'' is the Democrats'' ''complete failure to specify any evidence that General Pryor misled the committee.''

Indeed, they haven't even specified exactly what their charges against him are. There is good reason, then, to agree with Chairman Hatch that the Pryor opponents are engaged in a ''full-scale fishing expedition.''

Enough is enough. The campaign against Bill Pryor has sunk to tawdry depths. Unless the Democrats ''put up'' a legitimate reason to delay, instead of these faith-based and procedural smears, they owe him an up-or-down confirmation vote on the Senate floor, with no filibusters and no more subterfuge.

Mr. HATCH. Now, look, it is a little late to start saying we should have a rule that you can never mention religion. That means you could never mention Roe v. Wade. But that would take away the biggest argument that Democrats have against these people. I don't like to mention religion either—never have except in General Pryor's case, after Democrats had not so subtly raised the issue.

Now, with regard to the criticism of Boyden Gray's group, those terms were used first by People for the American Way in formal ads and letters, and then used by, I think, the Americans United for Separation of Church and State. These are two liberal groups.

Here is Americans United for Separation of Church and State, criticizing the nomination of John Ashcroft because he was for charitable choice legislation:

Ashcroft charitable choice provisions allow a Government-funded program to hang a sign that says ''Catholics need not apply.''

Where did that come from? That was long before Boyden Gray's group used such language—after all of Democrats' attacks on Pryor's deeply held beliefs during his hearing.

What about People for the American Way? People for the American Way, again, criticizing John Ashcroft because of the charitable choice legislation and saying:

An evangelical church running a Government-funded welfare program could state that ''Catholics need not apply'' in a help wanted ad.

Which I doubt any of them would do.

Now, leftist groups used such language, and all of a sudden we hear this screaming and shouting that Boyden Gray's group used the same language—after Democrats put Pryor's religious beliefs squarely at issue during his hearing and markup. Now some will say: Well, I certainly didn't mean for my questions to put his religion at issue. Well, what do you mean it to be? Religious beliefs are his deeply held beliefs and personal beliefs.

Now, look, my colleagues have a right to ask questions, but I also have a right to point out that I think those questions have led us into some very tender areas.

Frankly, what it all comes down to—I hate to say this, but it is true—is Roe v. Wade. That is what it comes down to. It is the be-all and end-all issue to most of our colleagues over here.

Now, it has been to a couple of my colleagues over here, too, but we stopped our side from using it as a litmus test. In fact, I don't know of anybody over here who has used it as a litmus test. But in virtually every case, that is the chief issue Democrats use against President Bush's nominees and the chief gripe about what kind of people they are—because they are traditional pro-life religious people. I don't know what other conclusion you can come to.

So to bring this resolution up is just a political show, because nobody in their right mind is going to let them get away with that type of treatment—or should I say mistreatment—of any President's judicial nominees. I do not want anybody on our side doing it either.

Also, frankly, for my colleague from Vermont, I know he is concerned about this. And I don't think any of these groups, including the conservative groups, should use this type of ''Catholics need not apply'' language. I don't think it is right. I don't think it should be done. But the ones who did it first, the ones who were never criticized by our media in this country, the ones who were never criticized by my colleagues on the other side, who are now decrying all of this, were the Democratic, liberal inside-the-beltway groups. And all of a sudden Boyden Gray's group is a very bad group because they have used the same language as People for the American Way and the group Americans United for Separation of Church and State.

I yield the remainder of my time to the distinguished Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I thank the distinguished chairman of the Judiciary Committee.

I was taught by my parents from early on never to laugh at somebody's religion, never to make fun of it, respect people's personal faith. I think that is a classic American principle we ought to live by. I would say that is what is happening in a subtle but very practical way is that Bill Pryor's strongly held beliefs, pro-life beliefs, are being attacked. Therefore, they are suggesting he is not fit for the bench because he has these beliefs and those beliefs just happen to be the same beliefs of the Catholic Church and many other church groups throughout America.

We cannot have that kind of test. We cannot expect nominees to come before this Judiciary Committee and renounce their beliefs as a condition to be confirmed. The question simply is, will they obey the law that is afoot in the United States by either statute, Constitution, or Supreme Court interpretation.

With regard to the resolution that has been proposed, that is just a political gimmick. It has no meaning whatsoever. I am surprised it has been offered in a body that considers itself serious. I believe, as was discussed last night between Senator MCCONNELL and Senator HATCH and others before, that you have a right to ask nominees questions. If a nominee has a religious belief and his church he supports has a certain belief that has been not the law of the land, it is all right to ask that person about it. It is all right to say, your church believes this or that, the Supreme Court has held differently. Will you follow Supreme Court law. That is the question. We have every right to ask that.

What we cannot say is, because your beliefs are contrary to maybe a Supreme Court ruling or a temporary majority in the Congress, that you are no longer fit for the bench. Everybody has beliefs. Everybody has ideas and concepts. They are free to do so in this country. What you should ask and determine is whether or not the nominee will follow the law.

Bill Pryor has a demonstrated record of that. And on abortion, where he has strong beliefs, the only thing I have found he has ever done involving the manner of abortion was to use his power as attorney general. I was a former Attorney General of Alabama. I know the attorney general can define the law for prosecuting attorneys throughout the entire State, the district attorneys. And Bill Pryor, after Alabama passed a partial-birth abortion statute—a procedure I abhor, most Americans abhor and Bill Pryor abhors—he wrote them and said: Large portions of that bill are unconstitutional and cannot be enforced by you. He directed them not to enforce substantial portions of it.

A pro-life leader in the State criticized him and said he gutted the bill. The only other thing I have ever heard him say about abortion was that he would prosecute to the fullest extent of the law those who violate and protest abortion clinics in violation of the law. He has never abused his position to further his personal views about abortion or any other, for that matter.

It is unbelievably frustrating to me to be on this floor and have Senators from New York and Massachusetts and Vermont stand up and say: This man is radical. He is out of the mainstream. He is unfit for the bench—just say those words about one of the most decent, caring, honest public servants I have ever met, a public servant who has demonstrated without any doubt his capacity to do the right thing

under the most tough political circumstances. I talked about that in depth last night but nobody seems to care. He has been accused of not being for civil rights.

The former county commissioner from Jefferson County, the largest county in the State, Chris McNair, whose daughter was killed in the 16th Street church bombing by the Klan many years ago, has written in support of Bill Pryor. He strongly supports him. Bill Pryor helped complete prosecutions in that case recently. Doug Jones, the prosecutor in that case, a Clinton U.S. Attorney, supports Bill Pryor. Artur Davis, Alabama Congressman, Harvard graduate, assistant United States Attorney, brilliant young congressman, supports Bill Pryor.

Joe Reed, chairman of the Alabama Democratic Conference, probably the most powerful political individual in Alabama, every Presidential candidate for the Democratic nomination knows Joe Reed personally and has probably talked to him a half a dozen times, a member of the Democratic National Committee, he writes a letter and says:

. . . I am a member of the Democratic National Committee and, of course, Mr. Pryor is a Republican, but these are only party labels. I am persuaded that in Mr. Pryor's eyes, Justice has only one label—Justice!

I am satisfied that if you appoint Mr. Pryor . . . he will be a credit to the Judiciary and will be a guardian of justice.

He goes on to say other things.

I want to share this letter from Alvin Holmes, a State Representative in Alabama for many years. He says:

I am a black member of the Alabama House of Representatives having served for 28 years. During my time of service in the Alabama House of Representatives, I have led most of the fights for civil rights of blacks, women, lesbians and gays and other minorities.

I consider Bill Pryor a moderate on race.

We have had Senators KENNEDY and SCHUMER and others saying Bill Pryor is unfair on the question of race. They say he questioned some portion of the Civil Rights Act. But he questioned section 5, the same portion Attorney General Thurbert Baker of Georgia, an African-American Democrat, has also criticized. This African-American Attorney General in Georgia has explicitly written in support of Bill Pryor for his confirmation.

This is what Mr. Holmes says:

From 1998 to 2000, Bill Pryor sided with the NAACP against a white Republican lawsuit that challenged the districts [in Alabama] for the Legislature. Pryor fought the case all the way to the U.S. Supreme Court and won . . . The lawsuit was filed by Attorney Mark Montiel—

I know Mr. Montiel, as does Mr. Pryor.

—a white Republican, and the 3-judge district court ruled 2 to 1 in favor of Mr. Montiel.

Bill Pryor took it to the Supreme Court on behalf of the existing districts and won the case.

In 2001, [he] sided with the Legislature when it redrew districts for Congress, the Legislature, and the State Board of Education.

Mark Montiel challenged that in Federal court. Bill Pryor defended the legislature, and the reapportionment plans that favored the Democrats in the State because it was a duly enacted legislative plan of Alabama.

He worked with Doug Jones to prosecute the KKK murderers at the 16th Street Baptist Church in Birmingham. As I said, Mr. Chris McNair, the father of one of those young girls who was killed, strongly supports Bill Pryor. He created the sentencing commission in Alabama for ending interracial disparities in sentences. In 2000, he started Mentor Alabama, a program to recruit positive adult role models for at-risk youth.

This is Mr. Alvin Holmes talking:

In 2001, I introduced a bill . . . to amend the Alabama Constitution repealing Alabama's racist ban on interracial marriage.

This was an amendment that had been declared unconstitutional but was still in the State Constitution. He continues:

It was passed with a slim majority among the voters and Bill Pryor later successfully defended that repeal . . .

Every prominent white political leader in Alabama, Republicans and Democrats, opposed or remained silent on the bill except Bill Pryor who openly and publicly asked white and black citizens to repeal the law.

Mr. SANTORUM. Will the Senator from Alabama yield for a question?

Mr. SESSIONS. I am pleased to yield.

Mr. SANTORUM. Is the Senator from Alabama familiar with an op-ed in this morning's Manchester Union Leader: ''Judging judges: Conservatives, Catholics needn't apply.''

Mr. SESSIONS. I have not seen that editorial, but we are receiving a flood of those kinds of communications.

Mr. SANTORUM. I would like to hear the Senator from Alabama's comment on just a couple of things the Union Leader says. In talking about some ads running about Catholics not needing to apply for judicial vacancies, it says:

Democratic Senators opposing President Bush's nomination of Alabama Attorney General William Pryor to the 11th Circuit Court of Appeals because of his ''deeply held'' belief that abortion is wrong.

I just suggest that a deeply held belief is rooted in his Catholic faith. That is where beliefs come from; they come from your moral teachings, much of which is through the faith that you were brought up on.

I return to the article:

In opposing Pryor's nomination on the grounds that he believes strongly that abortion is immoral, the Democrats are doing nothing more than playing sleazy partisan politics.

The last comment is:

What Senate Democrats are doing to the judicial nominations process is a disgrace to their party and to the country.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 310, the nomination of William H. Pryor, Jr., to be United States Circuit Judge for the Eleventh Circuit.

Bill Frist, Orrin Hatch, Ben Nighthorse Campbell, Craig Thomas, Charles Grassley, John Cornyn, Chuck Hagel, Jim Talent, Richard Shelby, Wayne Allard, Elizabeth Dole, Conrad Burns, Larry Craig, Jeff Sessions, Lindsey Graham, Rick Santorum, and Thad Cochran.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Vermont (Mr. JEFFORDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 53, nays 44, as follows:

[Rollcall Vote No. 316 Ex.]

YEAS—53

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Gregg	Smith
Chafee	Hagel	Snowe
Chambliss	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Kyl	Talent
Cornyn	Lott	Thomas
Craig	Lugar	Voinovich
Crapo	McCain	Warner
DeWine	McConnell	

NAYS—44

Akaka	Dodd	Leahy
Baucus	Dorgan	Levin
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Graham (FL)	Pryor
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carper	Inouye	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	

NOT VOTING—3

Jeffords Kerry Lieberman

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ENERGY POLICY ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 14, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

Pending:

Campbell amendment No. 886, to replace ''tribal consortia'' with ''tribal energy resource development organizations''.

Durbin modified amendment No. 1385, to amend the Internal Revenue Code of 1986 to provide additional tax incentives for enhancing motor vehicle fuel efficiency.

Domenici amendment No. 1412, to reform certain electricity laws.

Motion to commit the bill to the Committee on Energy and Natural Resources, with instructions to report back forthwith, with Frist amendment No. 1432 (to instructions on motion to commit), to provide a national energy policy for the United States of America.

Frist amendment No. 1433 (to instructions on motion to commit), to provide that all provisions of Division A and Division B shall take effect one day after enactment of this Act.

Frist amendment No. 1434 (to amendment No. 1433), to make a technical correction.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, as chairman of the Committee on Energy, I am ready to proceed at any time. We have no amendments on the Republican side, so the amendments are all on the Democrat side. We stand ready to accept amendments, to debate them, to vote on them, to get rid of them. We are on one of the sections that is clearly definable. It has a limited number of amendments, the so-called electricity section. We very much would like to proceed and ask the other side if they are ready, if they could perhaps start with an amendment on the electricity side, and let us know what the remaining amendments are so we can see how long it will take us to complete the electricity title of this bill.

I say that, and at the same time I put it as a question to the minority leader.

Mr. DASCHLE. Madam President, could the Chair inform the Senate as to what the pending business is?

The PRESIDING OFFICER. The pending question is the majority leader's second-degree amendment to his first-degree amendment to his motion to commit.

Mr. DASCHLE. Do I understand the Chair that the answer is the pending business is the motion to commit the bill, not the electricity title, is that not correct?

The PRESIDING OFFICER. The pending question is that motion and the amendments thereto.

Mr. DASCHLE. I inform my colleagues that is the issue.

Last night, the majority leader filled the tree and made a motion to commit, moving off of the floor for consideration of the energy title. I will talk about that for a couple of minutes as I consider those actions last night.

We have heard some very creative explanations from the majority about how the Senate has gotten into the mess we are in this morning. They are doing their best to blame Democrats, as usual. There is one simple explanation for why the Senate has not finished its work: Politics. The majority has been playing politics with this bill and with other issues. That is just not conducive to reaching the good bipartisan outcome we expect in the Senate. Republican leaders have been playing politics so much that some Members of the Republican caucus have themselves begun to protest.

Conservative Republicans now say their leadership could have finished this Energy bill if the Senate had not been repeatedly distracted by political matters. I agree.

In an article headlined ''Frist Schedules Judicial Votes, Slowing Energy Bill'' in today's addition of Rollcall, it reported that:

Though most Republicans are publicly blaming . . . ''obstructionism'' for the sputtering energy debate, many GOP Senators privately acknowledge that the [majority leader's] decision to pepper this week's schedule with unrelated votes on controversial judicial nominees has made it less likely the Senate will pass the energy bill before the August recess.

That is not Democrats talking; that is what Republicans have said.

The Rollcall article goes on to quote one Republican Senator:

It might have been better not to have brought [judges] up. I think it was a mistake.

That is according to JIM INHOFE, quoted in Rollcall.

It quotes Senator LARRY CRAIG, ''who is one of the many conservative Republicans who have complained about FRIST's unwillingness to push the energy bill to Senate passage, [and] said the majority leader could have avoided the time issue on judges by not bringing them up at all.

''It was unwise,'' said Craig, former chairman of the Republican Policy Committee.

I've been in the leadership—never at [Frist's] level—but I clearly realize the pressures put on you to do other things in the runup to a recess.

I've also been involved in tough floor debates before, and once you get on them, you stay on them, and you drive it until you finish it.

Senator CRAIG THOMAS agreed:

I wish we hadn't gone off it, frankly.

The Rollcall article went on to state that relatively few debate days spent on energy ''have been spread out over the past three months causing CRAIG and others to complain that the on-again, off-again schedule has prevented the bill from gaining the momentum to pass.''

Again, all quotes from Rollcall this morning.

Last evening provides a good but regrettable example of how this on-again, off-again Republican schedule has slowed the energy debate. The Republican leadership scheduled a vote for this morning on cloture on the nomination of one of the most highly controversial nominees we have had in this Congress. The outcome of today's vote was never in doubt. It was scheduled purely for political reasons, to satisfy a segment of the far right. A schedule of this vote elicited a vote last night not on energy but on a controversial judicial nominee. The Senate spent from 6 p.m. yesterday until 10:17 p.m. debating something other than energy, 4½ hours wasted on political debate brought on by Republicans, 4½ hours that could have been spent productively on the Energy bill.

That is not the only kind of interruption we have had this week. We even stopped action on the Senate floor on Tuesday for 2 hours so the Senators could attend a meeting at the White House. Guess what the purpose of that meeting was. For the Senate to be urged to complete the Energy bill. So we took 2 hours off of the floor debating the Energy bill to talk about how important it was to complete it—a few blocks from here at the White House.

Hurry up and wait seems to me to be the adage. Stop and start, switch gears. That has been the pattern all week long. In fact, that has been the pattern now for months. At one point we interrupted the Energy bill on June 12th and we did not return to it until the evening of July 24th, an interruption of 5½ weeks. To make matters worse, we are told the topsy-turvy schedule will continue tomorrow. As if the schedule were not bollixed up enough already, Senate Republican leaders now say we will be taking up the nomination of yet another controversial nominee for another political vote tomorrow.

As Republican Senators said today in Rollcall, that is just not the way to complete action on a major, complex piece of legislation.

Something else is very important about this debate. It has been omitted from what the majority is saying this morning. It is what this Energy bill and its debate is supposed to be all about. It is about ensuring Americans will have a comprehensive, balanced, reliable energy policy that protects consumers from energy market manipulation and high energy prices. These are important issues. It takes time to get them right. We have a duty to the American consumer to ensure that we fully consider what our energy policy should be in the future.